IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 760 OF 1995

Union of India ..Appellants

versus

M/s. Kailas & Company ..Respondents

Mr. A. N. Samant for the Appellants.

Mr. G. J. Mohanrao for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 30TH MARCH,2005

P.C. :

1. The above matter is on board for speaking to the minutes of my order dated 17.2.2005.

2. Heard Mr. Samant counsel for the appellants - Union of India and counsel for the respondents.

3. Mr. Samant made only one submission. According to him whenever in appeal, the liability is fixed upon two railways, then that order is required to be modified because it is only liability of one railway i.e. if the goods are discharged from Central Railway and they were reached to other Railways, then both the Railways could not be held

liable and therefore to that extent the order is required to be modified. He also contended that I have taken this view and decided number of appeals filed by the Union of India and therefore this modification will be consistent with my earlier orders.

4. Mr. Mohanrao who appeared for the respondents in the appeal was also heard by me. He tried to contend that modification sought for, for alteration of the final order, could not be done by the Court without Union of India filing Review Petition. Technically, he is correct but since Mr. Samant on the date of the order itself or immediately thereafter had orally mentioned that final order requires to be modified and since the order i.e. fixing liability of one railway does not affect the case of the respondents on merits, the modifications can be made. Therefore, I pass the following order:

ORDER

. Appeal is partly allowed.

. Liability of the payment of the decretal amount will be of the Appellants - General Manager Central Railway only, and the amount awarded will

carry interest at the rate of 6% per annum from the date of application till realisation or till date of payment or deposit with proportionate costs. So far as this appeal is concerned no order as to costs.

. Amount, if any, that is found in excess after the aforesaid calculation shall be returned to the appellants. Respondents will be permitted to withdraw the amount as per the calculations.

30.03.2005 (D.G. DESHPANDE, J.)